

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
WAYCROSS DIVISION

DANIEL ALTHONE GRIFFIN,

Plaintiff,

v.

CIVIL ACTION NO.: CV509-046

WAYCROSS JUDICIAL CIRCUIT;
Judge MICHAEL DEVANNE; ALEX
MARKOWICH, Assistant District
Attorney; CLAY CULP, Public
Defender; JANIE McQUAIG,
Probation Officer; and Officer
MARTY CREWS,

Defendants.

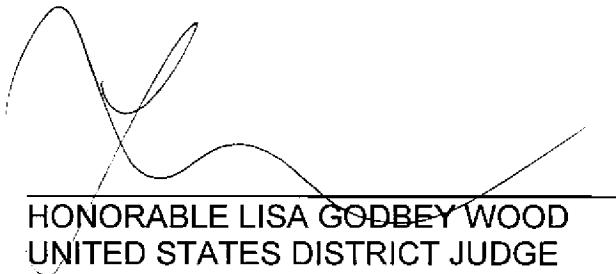
ORDER

After an independent and *de novo* review of the entire record, the undersigned concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In his Objections, Plaintiff asserts that one of the cases which the Magistrate Judge noted constituted a strike was reversed. However, this is not accurate, as Plaintiff has been so informed on a previous occasion. Griffin v. Parsons, CV307-50, Doc. No. 10. Plaintiff also asserts that he has been granted leave to proceed *in forma pauperis* in Griffin v. Markette, CV507-67. While Plaintiff was permitted to proceed *in forma pauperis* in that case, his cause of action was dismissed for failure to state a claim upon which relief could be granted pursuant to 42 U.S.C. § 1983 (CV507-67, Doc. No. 10), and his appeal of this Court's decision was deemed to be frivolous. (Id. at Doc. No. 26). Plaintiff further asserts that he was permitted to

proceed *in forma pauperis* in Griffin v. Parsons, CV508-20. This cause of action was brought pursuant to 28 U.S.C. § 2254, a federal habeas corpus statute, and Plaintiff's status as a three-striker under 28 U.S.C. § 1915(g) has no bearing on his filing and litigation of section 2254 petitions. Tate v. Price, 2009 WL 1034965, at *1 (M.D. Ala. Apr. 16, 2009) (citing In re Stone, 118 F.3d 1032, 1034 (5th Cir. 1997), for the proposition that requests for habeas corpus relief are not subject to the three-strikes provision of § 1915(g)).

The Magistrate Judge's Report and Recommendation is adopted as the opinion of the Court. Plaintiff's Complaint is **DISMISSED**, without prejudice. If Plaintiff wishes to proceed with this action, he can do so by resubmitting his Complaint along with the entire \$350.00 filing fee. The Clerk of Court is authorized to enter the appropriate judgment of dismissal.

SO ORDERED, this 24 day of November, 2009.



HONORABLE LISA GODBEY WOOD
UNITED STATES DISTRICT JUDGE